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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/772,523	02/05/2004	Leonard A. Weisbeck III		5396

7590 07/12/2005

James C. Simmons
The Law Office of James C. Simmons
11 Falmouth Lane
Williamsville, NY 14221

EXAMINER

MORROW, JASON S

ART UNIT	PAPER NUMBER
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3612

DATE MAILED: 07/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/772,523

Applicant(s)

WEISBECK, LEONARD A.

Examiner

Jason S. Morrow

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5,7-9,11-15 and 18-24 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 13 is/are allowed.
- 6) ☒ Claim(s) 1,2,4,5,7-9,11,14,15,20,21,23 and 24 is/are rejected.
- 7) ☒ Claim(s) 3, 12, 18, 19, 22 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 May 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____ |

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DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 20 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
3. Claim 20 recites the limitation "said respective cable" in line 3. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 5, 7-9, 11, 14, 15, 21, 23, and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rigau in view of Cummins.

Re claim 1, Rigau discloses an assembly for a vehicle having a tailgate, the assembly comprising a plate (60) for attachment to the tailgate and having an upper and a pair of side edges when attached to the tailgate with the tailgate in a closed position, a panel (12) which has an edge along which said panel is hingedly connected to the upper edge of the plate for serving

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as an alternative tailgate, and at least one side panel (58) hingedly connected to one of the side edges of the plate.

Re claim 5 a fastener (seen in figure 16, but unmarked) is provided for detachably attaching the alternative tailgate panel to the at least one side panel.

Re claim 7, a clip (65 in figure 15) is provided for releasably attaching a rear edge of the at least one side panel to the alternative tailgate panel.

Re claim 8, the plate is detachably attached to the tailgate (by bolts 66).

Re claim 9, the plate is attached to the inner surface of the tailgate (see figure 13a).

Re claim 11, a plate (60) is provided for attachment to the tailgate, the alternative tailgate panel and the at least one side panel being hingedly connected to the plate.

Re claim 14, a clip (65 in figure 15) is provided for releasably attaching a rear edge of the at least one side panel to the alternative tailgate panel.

Re claim 15, a fastener (seen in figure 16 but unmarked) is provided for detachably attaching the alternative tailgate panel to the at least one side panel.

Rigau discloses a pair of cables (78) connected to the alternative tailgate panel for deploying the alternative tailgate panel in an open position wherein the alternative tailgate panel forms an angle of about 180 degrees with the tailgate when the tailgate is in the open position.

Rigau does not disclose the plate upper edge having a length that is substantially equal to a length of the alternative tailgate panel edge such that two of the side panels are hingedly connected to the side edges of the plate.

Cummins teaches a plate (24) upper edge having a length which is substantially equal to the length of an alternative tailgate panel edge.

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It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify a plate, such as that disclosed by Rigau, to have an upper edge having a length that is substantially equal to a length of the alternative tailgate panel edge and thus resulting in two of the side panels being hingedly connected to the side edges of one plate (the one plate replacing the two plates 60 shown by Rigau), as taught by Cummins, in order to protect the tailgate surface from being damaged by a load.

Re claim 21, Rigau discloses all the limitations of the claim, as applied above, except for the assembly being constructed of aluminum.

The use of aluminum is old and well known in the art.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to construct an assembly, such as that disclosed by Rigau, of aluminum, as is old and well known in the art, since aluminum is a well known and readily available material suitable for mass manufacture.

6. Claims 2 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rigau and Cummins, as applied above, and further in view of Jarman.

Rigau discloses all the limitations of the claims, as applied above, except for the pair of cables being attachable to the vehicle.

Jarman teaches a pair of cables (30) attachable to a vehicle.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify an assembly, such as that disclosed by Rigau, to have the pair of cable

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attachable to the vehicle, as taught by Jarman, in order to allow the alternative tailgate to be in the open position while the side panels are in the folded position (see figure 2 of Jarman).

Allowable Subject Matter

7. Claim 13 is allowed.
8. Claims 3, 12, 18, 19, and 22 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
9. Claim 20 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

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CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason S. Morrow whose telephone number is (571) 272-6663.

The examiner can normally be reached on Monday-Friday, 8:00a.m.-4:30p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Dayoan can be reached on (571) 272-6659. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

July 1, 2005

Jason S. Morrow
Primary Examiner
Art Unit 3612


JASON MORROW
PRIMARY PATENT EXAMINER
7/6/05